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Case No: CL-2023-000739

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

11 December 2023

Before:

Charles Hollander KC sitting as a Judge of the High Court

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Between :

LINDA MAY GREEN	**Claimant**
- and -	
CT GROUP HOLDINGS LIMITED	**Defendant**

- -
- -

Philip Marshall KC and Justin Higgo KC (instructed by **Joseph Hage Aaronson**) for the **Claimant**
Robert Weekes KC (instructed by **Quinn Emanuel Urquhart & Sullivan UK LLP**) for the **Defendant**

Hearing date: 30 November 2023

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JUDGMENT

This judgment was handed down by the Judge remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 10:00 on Monday 11th December 2023.

Charles Hollander KC sitting as a Judge of the High Court:

1. By a Part 8 claim issued on 13 October 2023 Linda Green, the Claimant, seeks *Norwich Pharmacal* relief against CT Group Holdings Ltd ("**CT Group").**

2. The claim arises against a backdrop of proceedings before the Royal Court of Jersey and Royal Court of Guernsey concerning the restructuring of certain family trusts. For convenience I refer to those proceedings as "the Channel Island Proceedings" unless there is a need to distinguish between them. Because those proceedings involve trusts and minors, there is a confidentiality regime in place and I was asked to make confidentiality orders in these proceedings, which I did. However, the hearing was in open court.

The MdR Documents

3. In the Channel Island Proceedings, the Claimant's stepchildren, referred to as "AA," have alleged that the Claimant has failed to be open about her needs and resources and that this is relevant to the relief to be considered in those proceedings regarding the restructuring of certain family trusts. Mishcon de Reya ("MdR") act for AA.

4. On around 14 April 2023, the private investigation company, CT Group, was engaged by MdR on behalf of AA to conduct investigations into the Claimant's financial affairs.

5. On 12 May 2023, CT Group provided MdR with a phase one report ("the 12 May Report") stating that unidentified sources and confidential contacts had identified EUR 125 million controlled by the Claimant, largely being dividend payments from three Liechtenstein companies controlled by the Claimant: Galway Trading Ltd, Accord Investment Services Ltd, and Kael Services SA ("the Entities") and sums

from an account held by Monaco Asset Management ("MAM"), the Claimant's investment manager, at Julius Baer Bank ("Julius Baer") in Monaco. The 12 May Report asserted that those sums had been received by the Claimant into bank accounts held at BNP Paribas in Luxembourg, Lombard Odier in Switzerland, EFG Bank in Switzerland, and Barclays Bank Monaco ("the Banks").

6. On 26 May 2023, CT Group provided MdR with a series of documents evidencing the information set out in the 12 May Report (the "May Documents"). The May Documents comprise bank records and SWIFT confirmations showing substantial cash transfers being made to or from accounts in the Claimant's married name, as follows:

   a. Funds being received into a personal bank account held at EFG Bank Ltd (Switzerland) ("EFG Bank") by way of four payments between June 2021 and December 2022.

   b. Funds being received into another personal bank account at EFG Bank by way of 22 payments between February 2021 and September 2022, all made by Kael Services SA from an account held at Bank Frick & Co, and a further 13 payments out of the EFG account between May 2021 and January 2023.

   c. A payment being made from the second EFG account to an account with Barclays Bank plc (Monaco) ("Barclays Bank").

   d. Funds being received into a personal bank account at Banque Lombard Odier & Cie SA (Switzerland) ("Bank LOC") between March 2021 and March 2023 by way of eight payments all made by Galway Trading Ltd and originating from an account held at Bank Frick & Co.

e. Funds being received into a personal bank account held at BGL BNP Paribas S.A. (Luxembourg) ("BNP Paribas") between February 2021 and January 2023 by way of 40 payments all made by Accord Investment Services Ltd.

7. The May Documents were redacted to remove reference to the identity of the sources.

8. On or around 27 July 2023 CT Group provided a further set of documents to MdR from Julius Baer showing two payments being made in June 2021 and June 2022 to accounts at EFG Bank by MAM from an account at Julius Baer (the "July Documents"); The evidence of Mr Chik of MdR is that CT Group informed MdR that the source of the July Documents was different and independent to the source of the May Documents.

9. AA are seeking to introduce these documents into evidence in the Jersey Proceedings to contend that the Claimant has misled the trustees and the Courts as to her asset position, and in support of an application for further relief in light of the content of the documents. The Claimant says the documents are all forgeries, that she has no knowledge of, and has not received, the payments apparently shown in the documents. She says she does not have accounts with any of the banks said to have accounts in her name. She says she had no knowledge of, or interest in, Galway Trading Ltd, Accord Investment Services Ltd, or Kael Services SA. Each of EFG Bank, Banque LOC, BNP Paribas and Barclays Bank has confirmed, in response to enquiries by the Claimant, that they do not have and have never had any accounts linked to her. BNP Paribas has stated that the transactions in the SWIFT documents do not correspond to any transactions carried out with them, there are no corresponding BNP Paribas IBAN accounts to those mentioned in the SWIFT documents, that the SWIFT MT103 indicating a transfer from an Accord Investment

Services Ltd account at Bank Frick in Liechtenstein did not take place; and that the SWIFT documents do not correspond to authentic SWIFT messages because they contain characters which they should not be included, and omit required characters. The ECB has stated that the SWIFT messages (i.e. the May Documents) have fake references to the ECB and the screenshots do not come from the ECB Systems.. The Liechtenstein Commercial Register (oera.li) has no records of companies or other legal entities with names corresponding to the names of the Entities. MAM has confirmed that none of the transfers, account numbers, customer ID or portfolio numbers purportedly shown in the July Documents are known to them. MAM does not (and does not have the power to) instruct transfers for any of its clients, including the members of the family; and MAM had confirmed with Julius Baer that neither of the payments nor the related account referred to in the July Documents were known to the bank. Julius Baer has confirmed that the customer number in the July Documents was not a customer number relating to the Claimant, and that the transactions identified in the July Documents were not related to any account that belonged to her.

10. The Claimant applied in the Channel Island Proceedings for orders seeking disclosure from AA of information regarding the provenance of those documents. The Jersey Court subsequently made orders requiring AA to provide certain information regarding their engagement of CT Group and the source of the MdR Documents. AA sought further information from CT Group for that purpose including the identity of its purported sources but CT Group has refused to provide the information sought. The Claimant obtained permission from both the Jersey Royal Court and the Guernsey Royal Court to use certain documents in the Channel Islands Proceedings for the purposes of this claim.

11. Evidence on behalf of CT Group for this application is given by Mr Eugene Curley CMG OBE, who is an Executive Director of CT Group. Mr Curley's evidence asserts:

a. The investigation into the Claimant's assets was at all times conducted in accordance with the laws of England and Wales and the other jurisdictions in which the investigations took place;

b. CT Group engaged a trusted individual referred to as Person A to obtain information; Person A is a former intelligence operative within the intelligence service of an eastern European country who is currently resident in the Russian Federation;

c. Person A did so by engaging with a source Person X who is unknown to Mr Curley or any other person employed by CT Group, who provided the information in the 12 May Report and the May Documents to Person A;

d. When the accuracy of the May Documents had been questioned, CT Group then engaged Person A to obtain further information; he is said to have engaged Person Y, another individual unknown to Mr Curley or anyone employed by CT Group, who provided Person A with the July Documents; Following the letter of claim, CT Group informed Person A that there had been allegations of forgery and asked that person to assist again;

e. CT Group has engaged with 12 other trusted sources, including from Israel, which suggest that the Claimant's former husband had an association with and was a shareholder of the Entities, and in particular Galway and Accord;

f. Mr Curley considers that the May Documents and July Documents reflect actual transactions and that it is possible that the the Claimant has no knowledge of the

transactions and that a fraud may be being perpetrated on the Claimant; Mr Curley considers the May Documents and July Documents to be genuine and not forged; and

g. Person A is at risk to his personal safety if his association with CT Group should become publicly known.

12. CT Group have commenced proceedings in New York under USC s1782 for discovery of records from the Federal Reserve and CHIPS. The purpose of those proceedings is to access original documentation which CT Group say is likely to show whether the underlying transaction docuemnts are genuine. They say the evidence is likely to be decisive as to whether the MdR Documents are forged or not.

The present action

13. In these proceedings the Claimant seeks Norwich Pharmcal relief from CT Group as to their source. The Claim Form seeks :

1. the identity of the persons who obtained the information and documents referred to in the affidavits of Edwin Wu-Yee Chik (dated 13 June 2023, 11 August 2023, 8 September 2023 and 11 September 2023) and provided the same to CT Group, including their name, address and contact details;

2. full information in relation to how the said information and documents were obtained by the individuals identified in paragraph 2.1 and provided to CT Group, including:

(i) an explanation as to the relationship between CT Group and each of the individuals, including how and when they were instructed or engaged by CT Group in relation to the investigation regarding the Claimant, what information they were provided with by CT Group in that regard, and whether, and if so how, they were compensated for the provision of the documents;

(ii) all written communications (including by email or any other form of electronic media) between CT Group and any such individual in relation to the said information and documents;

(iii) all non-written communications between CT Group and any such individual in relation to the said information and documents; and

(iv) an explanation of any steps taken by CT Group to verify or corroborate the contents of the said documents.

14. In obtaining permission from the Jersey court to use documents for this purpose of making this claim, the Claimant gave undertakings to the Jersey court on 8 September 2023 not to commence proceedings in reliance on documents or information obtained from this Norwich Pharmacal application without the permission of the Jersey court other than making a criminal complaint.

15. In his witness statement in support of this application Mr Barkhordar sought the permission of this court to use any information or documents disclosed for the following purposes:

a. bringing civil proceedings, if so advised and subject to the permission of the Jersey and Guernsey Courts, against the relevant persons;

b. disclosing any crime and/or making a regulatory complaint to and communicating with the criminal and/or regulatory authorities in any relevant jurisdiction; and

c. for the purposes of the proceedings in the Royal Courts of Jersey and Guernsey to which the Claimant is a party.

16. The Claimant's case is that she is the victim of serious wrongdoing, involving the fabrication of banking documents intended to cause her prejudice in the Channel Island proceedings and falsely implicating her in the receipt of substantial assets. She

says this claim is a paradigm case for the application of well-established principles under which the court assists a victim of wrongdoing to identify the wrongdoers and obtain full information necessary to enable legal redress to be sought.

17. It was the Defendant's case that the court has no jurisdiction to make a Norwich Pharmacal order in the present circumstances, and if the court did have jurisdiction it should not exercise it. If it was otherwise minded to make an order it should adjourn pending determination of the s1782 proceedings.

LEGAL PRINCIPLES – *NORWICH PHARMACAL*

18. In *Collier v. Bennett* [2020] EWHC 1884 (QB), [2020] 4 WLR 116 at [35], Saini J identified and defined the following four conditions for the grant of such relief:

a. The applicant has to demonstrate a good arguable case that a form of legally recognised wrong has been committed against them by a person ("the Arguable Wrong Condition");

b. The respondent to the application must be mixed up in, so as to have facilitated, the wrongdoing ("the Mixed Up In Condition");

c. The respondent to the application must be able, or likely able, to provide the information or documents necessary to enable the ultimate wrongdoer to be pursued ("the Possession Condition"); and

d. Requiring disclosure from the respondent must be an appropriate and proportionate response in all the circumstances of the case, bearing in mind the exceptional but flexible nature of the jurisdiction ("the Overall Justice Condition").

This was approved by the Privy Council in *Stanford Asset Holdings Ltd v Afrasia Bank Ltd (Mauritius)* [2023] UKPC 35.

19. For reasons set out below, I do not think this formulation adequately takes into account issues that arise where the issues go beyond domestic proceedings.

20. CT Group accepts that the Mixed Up In Condition is satisfied but dispute that any of the others is satisfied.

The Arguable Wrong Condition

21. CT Group submit:

a. There is no good arguable case shown that a wrong has been done to the Claimant;

b. The Claimant has not clearly identified the wrong done to her;

c. In any event, to the extent that the Claimant asserts that she is a victim of crime, the Norwich Pharmacal procedure cannot be used at the behest of a victim of crime.

22. On this issue, I regard these submissions as unrealistic and untenable.

23. The Claimant has gone to extreme lengths to obtain documentation from a series of banks all of which disown the transactions in question. These would in themselves be sufficient, contrary to the submissions of CT Group, to satisfy me that there was a good arguable case of forgery but in addition the Claimant has herself made clear that her position is that she was not involved in any such transactions or the recipient of these monies. To suggest that there is no good arguable case because (i) the bank

letters are often cautious and (ii) the evidence from Mr Curley to the extent that he believes the docments are likely to have been genuine and the forgeries would have been difficult to effect, is unrealistic.

24. Exactly what criminal or civil wrongs have in consequence been done will depend on any relevant proper law. However it does not take much to infer that if there were forgeries, it was done for the purpose of prejudicing the Claimant, and that is highly likely to give rise to a variety of criminal and civil wrongs.

25. Mr Weekes' next point is that a criminal offence is not to be treated as an arguable wrong for the purpose of the Norwich Pharmacal jurisdiction.

26. This submission is based on the conflict between the judgment of Sedley LJ in *Financial Times Ltd v. Interbrew SA* [2002] EWCA Civ 274, [2002] 2 Lloyd's Rep 229 where he said that the Norwich Pharmacal jurisdiction could not be used at the behest of a victim of a crime and that of Lord Woolf in *Ashworth Hospital Authority v. MGN Ltd* [2002] UKHL 29, [2002] 1 WLR 2033 to the contrary. Mr Weekes argued that the view of Sedley LJ was ratio, and that I am bound by it, whereas that of Lord Woolf was obiter.

27. There is an interesting point here, but it is a very narrow one. In both *Interbrew* and *Ashworth,* the applicant was able to satisfy the court that a civil wrong had been done by the third party, so it was not necessary to determine whether a victim of crime could use the Norwich Pharmacal jurisdiction. It follows that both what Sedley LJ and Lord Woolf said was obiter, a conclusion correctly reached by Andrew Baker J in *Burford Capital Ltd_v. London Stock Exchange Group Plc* [2020] EWHC 1183 (Comm). The issue between Lord Woolf and Sedley LJ only therefore arises where the applicant relies solely on a wrong which is a crime but not at the came time a civil

wrong. It is possible to imagine such cases (a breach of a criminal statute which does not give rise to actionable civil liability) but I am not aware of any Norwich Pharmacal case in the sixty years since the revival of the doctrine by the House of Lords where this particular problem was directly in issue (although it might have arisen in *Burford* if the court had reached different conclusions) and it would be an unusual case. And if the point did arise, I would prefer the view of Lord Woolf, with which the rest of the House agreed, as (i) it better reflects the more flexible way in which the doctrine has developed in modern times: see *Ashworth* at [53] [54] (ii) it would be a brave first instance judge that declined to follow the unanimous view of the House of Lords even if *obiter* and I see no reason to demonstrate that temerity.

28. In the present case, therefore, I have no difficulty in holding that there is a good arguable case that at least a civil wrong has been occasioned to the Claimant.

The Possession Condition

29. The Possession Condition requires the respondent to the application to be able, or likely able, to provide the information or documents necessary to enable the ultimate wrongdoer to be pursued.

30. Mr Weekes said that this condition was not satisfied because Mr Curley's evidence was that CT Group did not know the identity of the ultimate source. Whilst (if his submissions were rejected) Person A could be named, Person A was not the ultimate source.

31. I do not regard this as a tenable objection. In *Interbrew,* Goldman Sachs and Lazards prepared a presentation for Interbrew on a possible takeover of South African Breweries. A fraudster doctored the figures in the written presentation then sent a

copy anonymously to all the Fleet Street newspapers who happily published the information in the presentation, the doctored figures suggesting Interbrew were intending to buy at a significant discount. In consequence Interbrew's share price plummeted. Interbrew sought delivery up of the originals sent to the newspapers with their envelopes so they could submit them to forensic examination hoping that would ultimately lead them to identify the culprit. None of the newspapers knew the identity of the culprit. Yet that did not prevent the applicant succeeding either before Lightman J or in the Court of Appeal[1]. Thus where a Norwich Pharmacal order is likely to assist in identification of the culprit, this condition is satisfied.

32. Mr Weekes also submitted that the relief sought was far wider than the jurisdiction permitted. I return to that issue below.

The Omar line of cases

33. The formulation of Saini J in *Collier* does not take into account this line of cases other than as part of the Overall Justice condition. In my view it should, and this issue is central in the present case.

34. In *Regina (Omar) v Secretary of State for Foreign and Commonwealth Affairs* 2014 QB 112 the Claimants were arrested in Kenya on suspicion of having been involved in a bombing in Uganda. They were subsequently transferred to Uganda and charged there with murder. The Claimants contended that their prosecution was an abuse of process and unconstitutional in that their rendition from Kenya had been illegal and that they had been tortured and ill-treated. They began judicial review proceedings in the United Kingdom for Norwich Pharmacal relief, seeking from the Foreign

[1] In the event there was no happy ending for Interbrew. The Guardian made clear that if Interbrew sought to enforce the order, they would organise a campaign for their readers to boycott Interbrew beer. In the light of that threat, Interbrew backed off. Then over seven years later the ECHR held that the Court of Appeal decision violated Art 10 of the Convention in *Financial Times Ltd v Interbrew 2010 EMLR 21*

Secretary information and evidence in relation to their alleged rendition and ill-treatment, to be used in the Ugandan proceedings. The Court of Appeal held that the regime set out in the Crime (International Co-operation) Act 2003 for the obtaining of evidence for use in foreign criminal proceedings differed from the Norwich Pharmacal remedy . Parliament was to be taken, in enacting the 2003 Act, to have created an exclusive procedure, not a parallel one; that, therefore, where the statutory regime was in play, the Norwich Pharmacal remedy did not run.

35. Maurice Kay LJ said that the 2003 Act, where it applied, set out sovereignty limits. At [25]:

"When one considers the Norwich Pharmacal remedy alongside the regime set out in the 2003 Act, certain points stand out as differences. I refer again to the three features of the 2003 Act described in para 15 above: the discretion of the Secretary of State, the confinement of requests to foreign courts and prosecuting authorities, and the national security and Crown servant exceptions. None of these features is built into the Norwich Pharmacal jurisprudence as a mandatory requirement. The most that can be said is that they may be considered as factors to be taken into consideration on a particular application. In my judgment, these are substantial differences such that, to use the words of Dyson JSC in the Child Poverty Action Group case, Parliament could not have intended the common law remedy to survive the introduction of the statutory scheme in this area. The statutory scheme accords ministerial discretion, national security and Crown service a paramountcy which the Norwich Pharmacal remedy does not. The statutory scheme enables the Secretary of State to retain a degree of control over sensitive information or evidence which the Norwich Pharmacal remedy would loosen or might deny. This leads me to the conclusion that Parliament did not and would not create a parallel procedure. It created an exclusive one in the area which it addressed. To relegate national security to the status of a material consideration to be weighed on a case-by-case basis at the stage of necessity or discretion in a Norwich Pharmacal application would be to

subvert the carefully calibrated statutory scheme. I am in no doubt that, where the scheme of the 2003 Act is in play, Norwich Pharmacal does not run."

36. He did not accept the distinction between evidence and information drawn by the Divisional Court. At [12]:

"the Divisional Court attached some importance to the fact that what the claimants are seeking here was expressly referred to as "evidence" rather than "information". I do not consider that anything turns on that taxonomy. I consider that the distinction is elusive or illusory or, to adopt the word of [counsel], "ephemeral". Today's information often ripens into tomorrow's evidence."

37. Maurice Kay LJ made it clear that the same principle applied in civil cases where the relevant statute was the Evidence (Proceedings In Other Jurisdictions) Act 1975.

38. In *Singularis Holdings Ltd v PricewaterhouseCoopers* 2015 AC 1675, which was not a Norwich Pharmacal case, Lord Sumption, speaking for the Privy Council, said at [25]:

"In the Board's opinion, there is a power at common law to assist a foreign court of insolvency jurisdiction by ordering the production of information in oral or documentary form which is necessary for the administration of a foreign winding up….it is not available for purposes which are properly the subject of other schemes for the compulsory provision of information. In particular, as the reasoning in Norwich Pharmacal [1974] AC 133 and R (Omar) v Secretary of State for Foreign and Commonwealth Affairs [2013] 1 All ER 161; [2014] QB 112 (at both levels) shows, common law powers of this kind are not a permissible mode of obtaining material for use in actual or anticipated litigation. That field is covered by rules of forensic procedure and statutory provisions for obtaining evidence in foreign jurisdictions which liquidators, like other litigants or potential litigants, must accept with all their limitations. Moreover, in some jurisdictions, it may well be contrary to

domestic public policy to make an order which there would be no power to make in a domestic insolvency. "

39. In *Ramilos Trading Ltd v Buyanovsky [2016] 2 CLC 896* Ramilos, a BVI company, sought a Norwich Pharmacal or Bankers Trust order against the defendant British citizen resident in the UK. Flaux J held that none of the proposed claims against the third party coud be brought in England. He said:

"119. I do not accept that submission or the related submission that the claimant in this case is at the stage before the institution abroad of proceedings contemplated, within the meaning of section 1(b) of the 1975 Act. In my judgment ... the claimant in the present case has already identified and thus knows in which jurisdictions any claim could be brought and to that extent the institution of proceedings within the meaning of section 1(b) is contemplated. ...

120. Even if the argument that the claimant is at some stage before the institution of proceedings abroad is contemplated were correct, it gives rise to the illogicality I identified during the course of argument that, on this hypothesis, the claimant has Norwich Pharmacal relief available, when it does not have enough to advance a claim at all, but where it does have sufficient evidence to mount a claim but needs the additional information sought to support the claim, Norwich Pharmacal relief is not available. It seems to me that the answer to this illogicality point is that if, as Mr Akkouh submitted, the claimant is at some stage before proceedings are contemplated, that is because the claimant cannot actually establish that there has been any wrongdoing, only that it suspects that there has been wrongdoing, in which case the claimant cannot show a sufficiently good arguable case to entitle it to Norwich Pharmacal relief.

121. I agree with Mr Chapman QC that it is not permissible to bypass the statutory regime simply by asserting that the case is at some earlier stage before the institution of proceedings abroad is contemplated. The reality in this case is that one of two situations must pertain. First, on the basis of the allegations which the claimant already makes, it has sufficient to launch a claim whether here or abroad, which must be a fortiori the position in relation to the dividends issue, where the claimant no

longer pursues Norwich Pharmacal relief on the basis that sufficient information has been provided in the defendant's witness statement. This can only be on the basis that the claimant has sufficient information to plead its claim in relation to the dividends issue. Second, the alternative is that, whilst the claimant suspects wrongdoing and wishes to bring a claim against Strongfield in Cyprus arbitration or against the Polyplastic Group, Dameka Finance Limited, ETPHL or Violett Polymer in a foreign jurisdiction, the claimant cannot show a sufficiently good arguable case of wrongdoing to satisfy the first threshold condition to Norwich Pharmacal relief (even if the jurisdiction were available to obtain evidence or disclosure for use in foreign proceedings)….

123. If, as I have held, the 1975 Act is engaged in respect of any attempt to obtain information or evidence, but the claimant is unable to obtain an order of the foreign court or a letter of request, that unavailability of relief from the foreign court is no answer to the argument that the statutory regime is engaged and precludes any common law remedies under the Norwich Pharmacal jurisdiction. This follows from [66] of Omar in the Divisional Court, and there is no residual discretion to grant Norwich Pharmacal relief in such a case. As Sir John Thomas P said: 'The jurisdiction of the court is confined to the statutory regime'

40. It was argued by Mr Marshall that there was a difference between the 1975 Act and the 2003 Act. Flaux J rejected this at [129]:

"The alleged significant difference between the 2003 Act considered in Omar and the 1975 Act is a distinction without a difference, since there is in both statutory regimes a critical similarity: in both regimes, the request has to come from the foreign court (or under the 2003 Act the foreign prosecuting authority), it cannot come from the individual claimant or applicant, in stark contrast to the position under the Norwich Pharmacal jurisdiction. Thus in the case of both regimes, there is what was correctly described by counsel for the Secretary of State in Omar as an important constraint, one of the 'sovereignty limits on the extent of assistance' (see [19] of the judgment of Maurice Kay LJ)."

41. It is relevant to set out applicable parts of the 1975 Act and the 2003 Act. In relation to the 1975 Act s1 provides:

Where an application is made to the High Court, the Court of Session or the High Court of Justice in Northern Ireland for an order for evidence to be obtained in the part of the United Kingdom in which it exercises jurisdiction, and the court is satisfied—
(a) that the application is made in pursuance of a request issued by or on behalf of a court or tribunal ("the requesting court") exercising jurisdiction in any other part of the United Kingdom or in a country or territory outside the United Kingdom; and
(b) that the evidence to which the application relates is to be obtained for the purposes of civil proceedings which either have been instituted before the requesting court or whose institution before that court is contemplated,
the High Court, Court of Session or High Court of Justice in Northern Ireland, as the case may be, shall have the powers conferred on it by the following provisions of this Act.:

42. As to the 2003 Act, s14 provides:

(1) The territorial authority may arrange for evidence to be obtained under section 15 if the request for assistance in obtaining the evidence is made in connection with–
(a) criminal proceedings or a criminal investigation, being carried on outside the United Kingdom,
(b) administrative proceedings, or an investigation into an act punishable in such proceedings, being carried on there,
(c) clemency proceedings, or proceedings on an appeal before a court against a decision in administrative proceedings, being carried on, or intended to be carried on, there.
(2) In a case within subsection (1)(a) or (b), the authority may arrange for the evidence to be so obtained only if the authority is satisfied–
(a) that an offence under the law of the country in question has been committed or that there are reasonable grounds for suspecting that such an offence has been committed, and

(b) that proceedings in respect of the offence have been instituted in that country or that an investigation into the offence is being carried on there.

An offence includes an act punishable in administrative proceedings.

43. It follows that the statutory scheme in civil cases covers where the evidence to which the application relates is to be obtained for the purposes of civil proceedings "*which either have been instituted before the requesting court or whose institution before that court is contemplated"* and in criminal cases "*is made in connection with criminal proceedings or a criminal investigation, being carried on outside the United Kingdom".*

44. Thus the effect of *Omar* and the cases which follow it is that where the purpose of the Norwich Pharmacal application is to obtain evidence for use in foreign civil proceedings, or in connection with criminal proceedings or a criminal investigation being carried on outside the United Kingdom, the court has no jurisdiction to make a Norwich Pharmacal order because the exclusive remedy is under the respective statutory scheme.

45. This point does not seem to have occurred to anyone in the first fifty years since Norwich Pharmacal was decided. It seems to mean that cases such as *R(Mohamed) v Secretary of State for Foreign and Commonwealth Affairs [2009] 1 WLR 2579* were decided *per incuriam.* It has not gained universal acceptance abroad: thus in *Essar Global Fund Ltd v Arcellormittal USA LLC* 3 May 2021 the Cayman Court of Appeal (Goldring P, Rix and Martin JA) held, in relation to a Cayman statute in the same terms as the 1975 Act that there was no conflict between the 1975 Act and a Norwich Pharmacal order.

46. However, its consequences in this jurisdiction are more significant than are perhaps often appreciated. It means that some of the earlier Norwich Pharmacal cases have to be reconsidered in the light of this principle. It also means that Norwich Pharmacal cannot be used for any purpose which would be at odds with the stsatutory regime.

47. But what it also does is to focus on the question: for what purpose is the Norwich Pharmacal order being sought? In *Burford Capital at [25]* Andrew Baker J said*:*

"it is of the essence of the Norwich Pharmacal claim to identify not only what information is sought but also why it is sought. "

Then at [147]:

> *"The legislative scheme that in R (Omar) , supra , was held so to occupy the territory that it would be inconsistent for the court to exercise the Norwich Pharmacal jurisdiction was the Crime (International Co-operation) Act 2003 . This again illustrates the point I made at the outset that the purpose for which information is sought, by the Norwich Pharmacal claimant, is of the essence of the claim. The claimant in R (Omar) sought Norwich Pharmacal relief so as to obtain evidence for use in foreign criminal proceedings. But by the 2003 Act, Parliament had created a statutory scheme for precisely that purpose, i.e. the obtaining of evidence by someone in the position of the claimants in that case for use in foreign criminal proceedings….. That ratio was then applied to the Evidence (Proceedings in Other Jurisdictions) Act 1975 in Ramilos for the conclusion that the Norwich Pharmacal jurisdiction was ousted as regards the obtaining from a third party of evidence for use in foreign civil proceedings."*

48. The identification of the purpose or purposes for which the relief is sought are crucial in multi-jurisdictional cases because if the intended purpose is an illegitimate purpose in the light of *Omar*, the court cannot, or will not, make an order.

49. Mr Marshall said that it was impossible to know exactly what purpose the information would be used for until it was obtained, there were various possibilities and a decision could not reasonably be made until the information was obtained. He referred to

Shalaimoun v Mining Technologies Inc [2012] 1WLR 1276 in support of this submission. There Coulson J said at [20]:

"the respondent remained unsure of what proceedings were going to come out of the Bankers Trust / Norwich Pharmacal applications, or indeed whether any proceedings were even viable. The whole point of the *applications was to try and obtain sufficient information to allow the respondent to come to a careful and considered view as to what claims could be made, and where they should be launched. "*

But at [17] Coulson J said:
"there can be no doubt that Bankers Trust/Norwich Pharmacal orders can be used in order to obtain documents which are subsequently deployed in claims made in foreign jurisdictions.

50. This, therefore was a pre-*Omar* case and the reasoning cannot stand with *Omar.*

51. In a case where there is no jurisdictional issue, there is no real difficulty in an applicant saying "I am not sure whether I want to dismiss the employee, start civil proceedings or make a criminal complaint, I will decide when I get the information." But if the case involves a number of jurisdictions, and particularly if the connection with England is limited, the application will be much more problematic and the focus on the applicant's purpose will be important.

52. Moreover, in non-domestic Norwich Pharmacal cases it may often be necessary to consider the effect of the decision of the Court of Appeal in *Gorbachev v Gouriev* 2023 KB 1. This was a case on non-party disclosure where the Court of Appeal held that in any normal case sovereignty issues prevented it from making an order against a non-party for disclosure of documents located outside the jurisdiction. This was not a

point on which I was addressed in the present case, but in other non-domestic Norwich Pharmacal cases it may well be significant.

53. Interestingly, it has only become possible to obtain leave to serve a Norwich Pharmacal application out the jurisdiction since 1 October 2022, when a new gateway (25) was inserted in para 3.1 of Practice Direction 6B. But that simply means that it is no longer a bar to an application that it cannot be served on a defendant outside the jurisdiction.

54. I would therefore propose that in addition to the four preconditions in *Collier* there should be a further condition:

"Is the application made for a legitimate purpose" (the "Proper Purpose" test).

Such a formulation reflects the importance of the *Omar* line of authority in non-domestic cases and is in accordance with the analysis of Andrew Baker J in *Burford.*

Application of Omar to the present

55. For the reasons set out, I do not consider that in any case with a jurisdictional element, it is good enough to adopt a "wait and see" attitude to the purpose of the application.

56. It could not be a proper purpose to seek the information for civil proceedings abroad, whether in the Channel Islands or elsewhere.

57. It could not be a proper purpose to seek the information in connection with criminal proceedings abroad. Mr Marshall suggested the wording of the 2003 Act was narrower than the 1975 Act, and therefore that making a criminal complaint abroad would not fall within the statutory scheme. Use for purposes of making a criminal

complaint to a foreign authority is surely "*in connection with criminal proceedings or a criminal investigation"* but even if I was wrong on that, I do not accept that it is in any real sense the purpose of this application to make a criminal complaint against a currently unknown person in an unknown jurisdiction or that the Claimant would suffer prejudice if she was deprived of the opportunity to make such a complaint.

58. Mr Marshall suggested that it was possible obtaining the information would lead to civil or criminal proceedings in this jurisdiction, either against CT Group themselves or against the ultimate wrongdoer (whom I shall refer to as "the third party"). But there is nothing in this case which connects it with this jurisdiction other than the residence of CT Group. There is no reason on the evidence to believe the third party has anything to do with this jurisdiction.

59. As for the suggestion the purpose could be to bring proceedings against CT Group, it seems to me that if that was the intention, this application would have needed to be framed very differently and should have been brought under CPR 31.16 for pre-action disclosure. CT Group are entitled to complain that purpose was not foreshadowed and is not a legitimate use of the Norwich Pharmacal procedure. Nor would I have been satisfied there was a good arguable case of wrongdoing against CT Group.

60. Thus I do not consider the Claimant has shown a legitimate purpose for this application.

The Overall Justice Condition

61. Requiring disclosure from the respondent must be an appropriate and proportionate response in all the circumstances of the case, bearing in mind the exceptional but

flexible nature of the jurisdiction. Another means of looking at the effect of *Omar* is to treat that as a factor to be identified as part of the overall justice condition.

62. In *Rugby Football Union v Consolidated Information Services Ltd* [2012] UKSC 55 ("***RFU***") at [17], Lord Kerr held that it was relevant to have regard to: (i) the strength of the applicant's case; (ii) the strong public interest in allowing the applicant to vindicate his legal rights; (iii) whether the making of the order will deter similar wrongdoing in the future; (iv) whether the information could be obtained from another source; (v) whether the respondent to the application knew or ought to have known that he was facilitating arguable wrongdoing; (vi) whether the order might reveal the names of innocent persons as well as wrongdoers, and if so whether such innocent persons will suffer any harm as a result; (vii) the degree of confidentiality of the information sought; (viii) privacy rights under Article 8, ECHR; (ix) rights and freedoms under data protection legislation; and (x) the public interest in maintaining the confidentiality of journalistic sources.

63. While setting out the factors, Lord Kerr in RFU explained that "the essential purpose of the remedy is to do justice" (at [17]) and "cases have emphasised the need for flexibility and discretion in considering whether the remedy should be granted" (at [15]). Whether it can be regarded as an exercise of discretion or rather judgment (see *Arnold J in Goldeneye Eye (International) Ltd v Telefonica UK Ltd [2012] EWHC 723 (Ch) at [147]* perhaps does not matter, the relevant factors must be weighed in the balance.

64. In this regard the Claimant submitted:

a. The Claimant has a strong case that wrongdoing has occurred.

b. There is a strong public interest in allowing her to vindicate her legal rights, particularly where: (a) the wrongdoing appears to be criminal in nature; and (b) rather than being a one-off event, the harmful conduct has been repeated apparently by different persons (in that the July Documents were arguably forged in order to authenticate the May Documents after the authenticity of the latter had been called into question).

c. If, as appears to be the case, sources of CT Group are forging documents which are to be deployed in court proceedings, an order that the identity of those sources be disclosed (together with an explanation of how the forgeries came about) is likely to deter similar wrongdoing in the future. Persons acting as such "sources" will know that they cannot get away with such conduct.

d. The information cannot be obtained from another source; an order against CT Group is the only option.

e. At the very least, CT Group ought to have known that it was facilitating arguable wrongdoing. Notwithstanding the assertions of Mr Curley that the MdR Documents were obtained lawfully, no coherent explanation has been advanced to support this and it is difficult to see on what basis those documents could have been obtained lawfully.

f. It can properly be inferred that CT Group was on notice as to the arguable fabrication of the May Documents at the time it was instructed by AA to obtain further documents "verifying" the May Documents and accordingly was on notice to the possibility that such "verifying" documents might also be inauthentic.

g. The disclosure sought by the Claimant relates to the persons who obtained the information in the 12 May Report and the MdR Documents, together with information relating to their relationship and communications with CT Group, and CT Group's own actions in connection with the verification of the contents of the MdR Documents. It is, therefore, targeted at identifying wrong-doers and ought not to result in the disclosure of the identity of innocent third parties. In the speech of Lord Reid in *Norwich Pharmacal v Commissioners of Customs & Excise* [1974] AC 133 at 175 A-D he emphasised that the applicant will generally be entitled to "*full information"*. A wide form of order can therefore be justified in this type of application and is both appropriate and necessary in this case given the serious and persistent nature of the wrongdoing, the limited information available to the Claimant and the extent of relevant materials and information held by CT Group.

65. For the avoidance of doubt, I do not consider that the evidence before the court demonstrates wrongdoing or improper behaviour by CT Group. Exactly how the information was obtained is referred to in Mr Curley's evidence and I am not prepared to indulge in speculation which goes beyond that.

66. CT Group have said that disclosure of the identity of Person A is confidential and disclosure would compromise their identity. They say that confidentiality is vitally important to the effective running of its operations and that it does not wish to compromise the identity and safety of Person A.

67. In *JSC BTA Bank v Shalabayev* [2011] EWHC 2903 (Ch) Henderson J reviewed the authorities on this issue and said at [40] that part of the public interest was that tortfeasors should not have the comfort of knowing that they could avoid the obligation to make a disclosure by pleading risk of danger to themselves. He cited the

application for permission to appeal in *Coco Cola Company & Schweppes Ltd v Gilbey* [1996] FSR 23 where Nourse LJ said:

> *""At its root lies the clearest issue as to the rule of law. The applicant's case is tantamount to a submission that the court should be deflected from its normal and appropriate course by vicarious threats of violence. Save, just possibly, in the very most exceptional set of circumstances, which certainly do not arise in the present case, in my judgment the court ought never to accede to such a submission."*

68. I regard this factor as one matter to be weighed in the balance on the Overall Justice Condition. However, it is not a factor which by itself would prevent me making an order, particularly as it would be possible to limit the persons to whom disclosure was made, at least in the first instance, to preserve confidentiality.

Overall Justice Condition: Discussion

69. I have considerable sympathy for the Claimant, in that it is not surprising she wishes to find out how it is that what appears to be a fraud on her is being perpetrated, and who is behind it. On her case, there have been repeated forgeries designed to prejudice her position.

70. That said, it is hard to see how she is likely to benefit from the making of an order. Mr Curley makes clear in his evidence that whilst CT Group knows the identity of Person A, Person A is merely a middleman and no one in CT Group knows the identity of the ultimate source or wrongdoer. Person A is a former intelligence operative within the intelligence service of an eastern European country who is currently resident in the Russian Federation. Seeking to obtain an order requiring Person A to reveal their

source looks fraught with problems, given that they seem to have nothing to do with this jurisdiction.

71. Mr Marshall criticised the evidence of Mr Curley as lacking a statement of his sources to the extent that the matters in his evidence were outside his own knowledge (see para 3 of his statement). But it is clear that what he is saying about Person A comes at least substantially from personal knowledge: see paras 43-47.

72. I therefore have in mind the following:

a. If the purpose was use of the information for civil proceedings abroad that would be an impermissible purpose.

b. If the purpose was use of the information in connection with criminal proceedings or a criminal investigation abroad that would be an impermissible purpose.

c. In the light of that, it is very hard to see what legitimate purpose would be served by the making of an order as requested.

d. The evidence of forgery is, as it presently appears, very strong and, assuming that is correct, it should not be difficult for the Claimant to persuade the courts in the Channel Island Proceedings of the forgeries without the naming of the alleged wrongdoer; indeed, it is not very clear how it would assist the Claimant in the Channel Island Proceedings if the ultimate wrongdoer were named.

e. The case has nothing to do with this jurisdiction other than the residence of CT Group and there is no reason to think there will be further proceedings in this jurisdiction.

f. The evidence indicates that the only person whom CT Group could identify is based in Russia and they do not know the identity of the ultimate source; any attempt to

obtain information from Person A looks fraught with problems.

g. There are security and confidentiality concerns in requiring CT Group to name Person A, and whilst that would not of itself be sufficient for me to refuse an order, given the lack of likely utility of an order, it becomes a more important factor.

73. I therefore conclude that:

a. The Claimant has failed to satisfy me that there is a permissible purpose for which this information is sought, given the *Omar* line of authority.

b. I am not satisfied that an order would serve a useful (and legitimate) purpose in any event and do not regard the Overall Justice Condition as being satisfied.

74. If I had taken a different view, I would have made a much more restricted order than that sought, but in the event it is unnecessary for me to consider that.

75. I should also say that if I had been minded to make an order, I would not have been willing to adjourn the application pending resolution of the s1782 proceedings, as suggested by Mr Weekes, a course which seems to have no sensible benefit.

Disposition

76. I therefore dismiss this application and the action. I should add that the case was well argued on both sides. I propose to give judgment remotely and without attendance from counsel. The parties can consider whether any consequential matters can be dealt with on paper or whether an oral hearing is necessary.